

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

THOMAS R. BUTLER,

Plaintiff,

Case No. 20-11100

v.

HON. DENISE PAGE HOOD

KEITH PAPENDICK and DEENA
M. LEIGHTON,

Defendants.

/

**ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION**

and

DISMISSING DEFENDANT KEITH PAPENDICK ONLY

This matter is before the Court on Magistrate Judge Jonathan J.C. Grey's Report and Recommendation (ECF No. 27) filed August 8, 2022 regarding Defendant Keith Papendick's Motion for Summary Judgment (ECF 22). Plaintiff Thomas R. Butler filed Objections to the Report and Recommendation on September 1, 2022 (dated and mailed August 25, 2022). (ECF No. 31) A response was filed to the Objections on September 15, 2022. (ECF No. 32)

The standard of review by the district court when examining a Report and Recommendation is set forth in 28 U.S.C. § 636. This Court "shall make a *de novo* determination of those portions of the report or the specified proposed findings or

recommendations to which an objection is made.” 28 U.S.C. § 636(B)(1)(c). The Court “may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate.” *Id.* In order to preserve the right to appeal the Magistrate Judge’s recommendation, a party must file objections to the Report and Recommendation within fourteen (14) days of service of the Report and Recommendation. Fed. R. Civ. P 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Secretary of Health and Human Servs.*, 932 F2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

After review of the August 8, 2022 Report and Recommendation, the Court concludes that the Magistrate Judge’s conclusion is correct. The Court agrees with the Magistrate Judge that Plaintiff failed to properly exhaust his available remedies prior to filing the claims against Defendant Papendick.

As to Plaintiff’s Objection No. 1 that because he did not know Papendick’s employment status, Plaintiff was not required to exhaust his claims against Papendick. Objection No. 1 is overruled because Plaintiff was required to exhaust his administrative remedies against Papendick. MDOC Grievance Pol. R.111-2 at 4 (A prisoner must include the names of all those involved in the issue being grieved); *see Kitchen v. Snyder*, No. 20-1936, 2021 WL 4470032 (6th Cir. June 23,

2021).

Plaintiff's Objection No. 2 which states that the Magistrate Judge did not address Plaintiff's evidence is also overruled. The issue before the Magistrate Judge was whether Plaintiff failed to exhaust his available remedies against Papendick. Plaintiff argues that he did not know Papendick's employment status, and essentially admits he had not done so. The Magistrate Judge properly reviewed the evidence available as to the exhaustion issue.

Objection No. 3 is overruled as to whether the grievance procedure was not available to Plaintiff because the MDOC Policy states that a grievance only requires facts involving the issue being grieved. Naming Papendick and the facts relating to the matter being grieved was all that was required. See MDOC Policy Directive 03.02.130 ¶R.

In Objection No. 4, Plaintiff objects that the Report and Recommendation stated there is no indication that he suffers from cognitive disability or lack of literacy. Plaintiff argues that he did not understated the grievance process. The Sixth Circuit has held that a plaintiff's failure to exhaust cannot be excused because of ignorance of the law or the grievance policy. *Napier v. Laurel County, Ky.*, 636 F.3d 218, 221 (6th Cir. 2011). Objection No. 4 is overruled.

Plaintiff's Objection No. 5 rehashes a grievance he filed in 2020, which the

Court overrules since it does not relate to the grievance against Papendick in the action before this Court.

Accordingly,

For the reasons set forth above,

IT IS ORDERED that Magistrate Judge Jonathan J.C. Grey's August 8, 2022 Report and Recommendation (**ECF No. 27**) is **ACCEPTED AND ADOPTED** as this Court's findings of fact and conclusions of law.

IT IS FURTHER ORDERED that Plaintiff's Objections (**ECF No. 31**) are **OVERRULED**.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (**ECF No. 22**) is **GRANTED**.

IT IS FURTHER ORDERED **Defendant Keith Papendick only is DISMISSED** with prejudice.

s/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: September 30, 2022